

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	Case No. 1:07-cr-183-WKW
)	
RICKEY RANDELL WREX SMITH)	

ORDER

This case is before the court on the defendant's Motion for Continuance (Doc. # 40) of the trial. The criminal case is currently set for trial during the May 19, 2008 term. For the reasons set forth below, the court finds that the trial should be continued pursuant to 18 U.S.C. § 3161(h).

While the grant of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the Court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161(c)(1). However, the Act excludes from the 70 day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial," § 3161(h)(8)(A), and "any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant." § 3161(h)(1)(A).

The court finds that the ends of justice served by continuing this trial outweigh the best interest of the public and Mr. Smith in a speedy trial. In support of his Motion for Continuance, the defense explains that Mr. Smith has not yet been adjudged to be mentally competent and that his

newly retained counsel has not had sufficient time to prepare this case. The government does not oppose the motion.

Accordingly, it is ORDERED that the defendant's Motion for Continuance (Doc. # 40) is GRANTED. Trial in this matter is continued from May 19, 2008, to the term of court beginning on June 23, 2008, at 10:00 a.m.

DONE this 22nd day of April, 2008.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE